

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between Santa Barbara Channelkeeper (“Channelkeeper”) and the City of San Buenaventura (“City”) regarding the action entitled Santa Barbara Channelkeeper v. State Water Resources Control Board and the City of San Buenaventura, Los Angeles County Superior Court, Case No. 19STCP01176 (“Action”). Channelkeeper and the City may be collectively referred to as “Parties” and individually as “Party”. The Agreement is entered into and effective on the date defined in Section 23 below (“Effective Date”).

RECITALS

Channelkeeper and the City recite as follows:

1. On September 19, 2014, Channelkeeper filed a Complaint for Declaratory Relief and Petition for Writ of Mandate (“Complaint”) against the City and the State Water Resources Control Board (“State Board”). The Complaint alleged that the City’s use of water in Reach 4 of the Ventura River from April through October is unreasonable, in violation of the California Constitution article X, section 2, and the public trust doctrine.

2. The City filed a Cross-Complaint on May 14, 2015, and a First Amended Cross-Complaint on June 11, 2015, against other users of water from the River and interconnected groundwater basins. On September 18, 2015, the trial court granted Channelkeeper’s motion to strike the First Amended Cross-Complaint.

3. The City appealed the order striking its First Amended Cross-Complaint, and the Court of Appeal reversed the trial court’s order. Santa Barbara Channelkeeper v. City of San Buenaventura, 19 Cal.App.5th 1176 (2018).

4. Following the appeal, on September 7, 2018, Channelkeeper filed a First Amended Complaint for Declaratory Relief and Petition for Writ of Mandate (“1st Am. Complaint”) against the City and the State Board. The 1st Am. Complaint alleges that the City’s use of water in Reach 4 of the Ventura River from April through October is unreasonable, in violation of the California Constitution article X, section 2, and the public trust doctrine, and requests a declaratory judgment that the City’s use of the River water is unreasonable. The 1st Am. Complaint further seeks to compel and enjoin the State Board to perform its alleged mandatory duties to prevent the City’s alleged unreasonable use of the River and impacts on public trust resources.

5. On September 24, 2018, the City filed a Second Amended Cross-Complaint that requests, among other things, an adjudication of water rights for the Ventura River Watershed, which includes the Upper Ventura River Groundwater Basin, Ojai Groundwater Basin, Lower Ventura River Groundwater Basin, and Upper Ojai Groundwater Basin. The 2nd Am. Cross-Complaint also requests a physical solution.

6. In consideration for the commitments made in this Agreement, Channelkeeper and the City intend to settle their past disputes while preserving claims and defenses for future alleged violations.

TERMS

7. Recitals. The above recitals are incorporated in and made a part of the terms of this Agreement.

8. Pilot Project. Within five business days after the Effective Date, the City will start the Foster Park Pilot Project (“Pilot Project”).

A. Pilot Flow Operational Regime. During the Pilot Project, the City will operate its Foster Park facilities using the following flow regime:

(1) When instream flow at Foster Park, as measured as described in Section 8(B) below, is less than or equal to 4.0 cubic feet per second (“CFS”), the City will shut down its Nye well 8;

(2) When instream flow at Foster Park, as measured as described in Section 8(B) below, is less than or equal to 3.0 CFS, the City will shut down its Nye well 7; and

(3) When instream flow at Foster Park, as measured as described in Section 8(B) below, is less than or equal to 2.0 CFS, the City will not extract water using its Foster Park facilities.

B. Flow Measurement Location and Shutoff/Restart Protocols. As part of the Pilot Project, the City will install new streamflow gauges directly above and directly below its Foster Park facilities.

(1) Once the new streamflow gauges are operational, the pilot flow operational regime described in Section 8(A) above will be measured using the protocol described in this Section 8(B) at the new streamflow gauge immediately above the Foster Park facilities.

(2) Until the new streamflow gauges are operational, the pilot flow operational regime described in Section 8(A) above will be measured at the USGS streamflow gauge at the Casitas Bridge (Gauge 11118500).

(3) The CFS triggers and corresponding operational changes shall be made when the relevant streamflow gauge registers below the flow threshold at any point within a calendar day for three consecutive calendar days. If the final reading below the threshold occurs after business hours, then the operational change will take place by 8 a.m. the following

business day. The operational changes may be returned to normal when the relevant streamflow gauge registers above the flow threshold for at least 72 consecutive hours.

C. Term of Pilot Project. The term of this Pilot Project will be for a period of 164 days following the Effective Date . This Pilot Project may be modified or terminated under emergency conditions.

D. Future Flow Regimes. All parties understand and agree that the Pilot Project is not an agreement by the City to maintain any specific flow regime after completion of the Pilot Project. The information provided through the Pilot Project may be used to help inform the establishment of target instream flows that will be included in the stipulated judgment and physical solution in the adjudication. However, the flow regime in the Pilot Project is not binding on the development of those target instream flows, which the parties agree and acknowledge may be less than, greater than or entirely different than the flow regime in the Pilot Project.

9. Non-Flow Measures. The City will also implement the following non-flow measures:

A. Foster Park Fish Barriers. The City will address the following two potential low-flow fish passage barriers at Foster Park:

(1) A 36 inch raw water line that runs southeasterly across the Ventura River from the City's intake facility. The line is covered in a concrete apron that due to scour is exposed above the water surface under certain flow conditions. The City will take action to address this potential barrier.

(2) Due to scour, the crest of the subsurface dam at Foster Park is

exposed above the water surface under certain flow conditions on its eastern terminus. The City shall take action to notch or otherwise address the subsurface dam at this location to remove a potential passage barrier.

B. Flow Gauging at Casitas Vista Road Bridge (USGS Gauge No. 11118500). If the United State Geological Survey (“USGS”) believes the Casitas Vista Road Bridge gauge equipment is not functioning as originally intended, the City shall work with the USGS, and other responsible parties, to repair the gauge or cause the installation of a new gauge.

C. Regulatory and Environmental Review. Completion of these non-flow measures is subject to all regulatory requirements and environmental review. The City may process the Foster Park Fish Barriers measures as one joint project that may also include operational upgrades to the City’s intake facility at Foster Park to enhance operational flexibility and better manage flow at this location.

D. Construction Milestones. The City’s estimated construction milestones for planning, permitting and construction of these non-flow measures are set forth below. The City shall use good faith efforts to accelerate the construction of these non-flow measures, jointly or individually, as feasible, including, but not limited to, by considering the use of statutory or categorical CEQA exemptions as provided in Section 9(C) above.

- (1) The City will complete preliminary design by April 1, 2020.
- (2) The City will circulate draft CEQA documents for public review by June 1, 2020.
- (3) The City will submit permit applications by July 1, 2020.
- (4) The City will complete CEQA review by October 1, 2020.
- (5) The City will complete construction within 1 year of receiving all

permits (time for advertise/bid/award/transition process/submittal review), subject to timing constraints in mitigation measures and permits on construction activity.

10. Channelkeeper's Attorney's Fees and Costs. Within thirty (30) days of the Effective Date, the City shall provide Channelkeeper's attorney, Daniel Cooper of Cooper & Lewand-Martin, Inc., a certified check in the amount of \$850,000.00 payable to "Santa Barbara Channelkeeper." The City's payment is for Channelkeeper's attorney's fees and costs incurred because of the Action, but is not intended to pay Channelkeeper's attorney's fees and costs for the trial court and appellate court proceedings challenging the City's Cross-Complaint and 1st Am. Cross-Complaint. Channelkeeper alleges that it has incurred \$1,041,075.29, and the Parties will defer resolving payment of the \$191,075.29 difference.

11. Force Majeure. The City shall not be considered to be in default in the performance of any of their respective obligations under this Agreement when performance becomes impossible due to a Force Majeure event. A Force Majeure event is any circumstance beyond the City's control, including without limitation, any act of God, war, fire, earthquake, flood, windstorm, or natural catastrophe; criminal acts; civil disturbance, vandalism, sabotage, or terrorism; restraint by court order or public authority or agency; or action or non-action by, or inability to obtain the necessary authorizations or approvals from any governmental agency. A Force Majeure event shall not include normal inclement weather, economic hardship, inability to pay, or employee negligence. If the City seeks to rely upon this Section to excuse or postpone performance, it shall have the burden of establishing that it could not reasonably have been expected to avoid the Force Majeure event and that its exercise of due diligence did not overcome the failure of performance. The City shall exercise due diligence to resolve and remove any Force Majeure event. Any delays due to the City's failure to make timely and bona fide applications and to exercise diligent efforts to comply with the terms in this Agreement will not, in any event, be considered to be circumstances beyond the City's control.

12. Release of Claims. Except as provided in the Agreement, the Parties discharge, release and waive as to each other, and their respective agents, employees, Boards, Councils, members, representatives, officers, directors, insurers, attorneys, affiliates, assigns, predecessors, and successors, from any and all claims, causes of action, losses, damages, costs and attorneys' fees, whether based on case law, the California or Federal Endangered Species Acts or other statutes, constitution, contract, tort, equity, indemnity, or any other theory of recovery, which the Parties have or may have, whether known or unknown, suspected or unsuspected, which were raised or might have been raised, or arise out of, or are connected with the Action, that occurred up to the date of the execution of this Agreement.

13. Waiver of Section 1542. Except as provided in the Agreement, the Parties acknowledge that they have been informed of and are familiar with the provisions of Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

The Parties waive and relinquish all rights and benefits they have under Civil Code section 1542 to the full extent that they may lawfully waive all such rights and benefits pertaining to the Released Claims.

14. Claims Not Released. The Parties do not release:

A. Future Pumping and Diversion. Channelkeeper's claim after the Pilot Project is completed but before entry of a stipulated judgment in the adjudication that future pumping and diversion of water in Reach 4 of the Ventura River is an unreasonable use in violation of the California Constitution Article X, Section 2, and the public trust doctrine.

B. Unpaid Attorney's Fees and Costs. Channelkeeper's claims for attorney's fees and costs in the amount of \$191,075.29.

C. Enforcement of Agreement. Any action to enforce the Agreement.

15. Request for Dismissal. Within five business days of the Effective Date, Channelkeeper shall file a request for dismissal in the form attached as Exhibit A.

16. Joint Press Release. Within five business days of the Effective Date, the Parties shall issue a joint press release in the form attached as Exhibit B.

17. Representations and Warranties. Each of the Parties represents and warrants to the other Party that:

A. As of the date of their execution of this Agreement, they are unaware of any facts, conditions or matters relating to, arising out of or connected with the events and/or transactions which would give rise to any claims for damages or equitable relief not being released by each party pursuant to the terms of this Agreement.

B. Each of the Parties has the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

C. No portion of any claim, demand, cause of action that they may have or might have, which are being released herein, has been assigned or transferred to any other person, entity, or company.

D. In executing this Agreement, the Parties have relied solely upon their

own judgment, belief and knowledge and on the advice and recommendations of their own independently selected counsel concerning the nature, extent and duration of their rights and claims. Further, that they have not been influenced by any representations or statements concerning any matters made by any other parties or by any person or attorney representing any other parties in connection with the negotiation and/or entering into of this Agreement.

18. No Admission of Liability. The Parties agree that by the execution of this Agreement, and the consummation of the settlement and release of claims as set forth herein, none of the Parties admit responsibility or liability as to any matter whatsoever, nor shall this release, or the settlement and release it effectuates, be admissible in evidence in any proceeding of any nature whatsoever except as described above.

19. Enforcement of Agreement. If legal proceedings are commenced by any of the Parties to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover all of such party's attorneys' fees and costs and expenses of litigation including any and all appeals or petitions as well as fees and costs incurred in enforcing any resulting judgment or award.

20. Entire Agreement. All agreements, covenants, representations and warranties, expressed and implied, oral and written, by each Party to this Agreement concerning its subject matter are contained herein. No other agreements, covenants, representations or warranties, expressed or implied, oral or written, have been made by any Party to any other Party concerning the subject matter of this Agreement. All prior and contemporaneous conversations, covenants and warranties concerning the subject matter of this Agreement are merged herein. This is a fully integrated Agreement.

21. Drafted by All Parties. This Agreement shall be deemed drafted by all Parties

with the advice of counsel for the purposes of its interpretation, sufficiency and enforcement, and shall not be construed against either under the doctrine of *contra preferentem*.

22. All Remedies Available for Breach of the Agreement. All remedies, including without limitation specific performance, shall be available for a breach of this Agreement.

23. Effective Date. This Agreement shall become effective immediately upon the execution of this Settlement Agreement by all Parties. This Agreement may be executed in counterparts. When all Parties and their respective attorneys have signed and delivered at least one such counterpart to the other Parties, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to all Parties. No original signatures shall be required to establish the validity or authenticity of this Agreement.

24. Governing Law. This Agreement shall be construed in accordance with, and shall be governed by, the laws of the State of California.

25. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining portions shall remain in full force as though such invalid or unenforceable provisions or portions had not been a part of this Agreement. However, if the provisions requiring dismissal of all actions and cross-actions with prejudice, or if the provisions for releases of claims as provided herein, are found to be invalid, then this Agreement shall be considered invalid in its entirety.

26. Perform All Acts. Each Party agrees to perform all acts and execute and deliver all documents necessary to carry out the purpose and intent of this Agreement.

Dated: September 25, 2019

SANTA BARBARA CHANNELKEEPER

By: 

Dated: September 30, 2019

CITY OF SAN BUENAVENTURA

By: 
City Manager

APPROVED AS TO FORM:

Dated: September 25, 2019

COOPER & LEWAND-MARTIN, INC.

By: 
DANIEL COOPER
Attorneys for Petitioner SANTA
BARBARA CHANNELKEEPER

Dated: September 30, 2019

BEST BEST & KRIEGER LLP

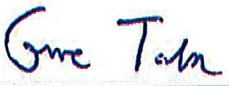
By: 
GENE TANAKA
SHAWN HAGERTY
SARAH CHRISTOPHER FOLEY
DAKOTAH BENJAMIN
Attorneys for Respondent and Cross-
Complainant CITY OF SAN
BUENAVENTURA

EXHIBIT A

Daniel Cooper (SBN 153576)
 Cooper & Lewand-Martin, Inc.
 1004B O'Reilly Avenue
 San Francisco, CA 94129
 (415) 360-2962
 daniel@cooperlewand-martin.com
 Plaintiff and Petitioner Santa Barbara Channelkeeper

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles

312 North Spring Street

Los Angeles, 90012

Spring Street Courthouse

PLAINTIFF/PETITIONER: Santa Barbara Channelkeeper

DEFENDANT/RESPONDENT: State Water Resources Control Board

REQUEST FOR DISMISSAL

19STCP01176

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please **dismiss** this action as follows:

a. (1) ☒ With prejudice (2) ☐ Without prejudice

b. (1) ☒ Complaint (2) ☒ Petition

(3) ☐ Cross-complaint filed by (name):

on (date):

(4) ☐ Cross-complaint filed by (name):

on (date):

(5) ☐ Entire action of all parties and all causes of action

(6) Other (specify): *All claims adv. City of SB except: its future pumping at Foster Park; and \$191,075.29 in attorney's fees.

2. (Complete in all cases except family law cases.)

The court ☐ did ☐ did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).

Date: September , 2019

Daniel Cooper



*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:

☒ Plaintiff/Petitioner

☐ Defendant/Respondent

☐ Cross-Complainant

TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:



** If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:

☐ Plaintiff/Petitioner

☐ Defendant/Respondent

☐ Cross-Complainant

(To be completed by clerk)

4. ☐ Dismissal entered as requested on (date):

5. ☐ Dismissal entered on (date):

as to only (name):

6. ☐ Dismissal **not entered** as requested for the following reasons (specify):

7. a. ☐ Attorney or party without attorney notified on (date):

b. ☐ Attorney or party without attorney not notified. Filing party failed to provide

☐ a copy to be conformed ☐ means to return conformed copy

Date:

Clerk, by _____, Deputy

REQUEST FOR DISMISSAL

PLAINTIFF/PETITIONER: Santa Barbara Channelkeepe
 DEFENDANT/RESPONDENT: State Water Resources Control Board

CASE NUMBER:
 19STCP01176

COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS

If a party whose court fees and costs were initially waived has recovered or will recover \$10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

Declaration Concerning Waived Court Fees

1. The court waived court fees and costs in this action for *(name)*:
2. The person named in item 1 is *(check one below)*:
 - a. ☐ not recovering anything of value by this action.
 - b. ☐ recovering less than \$10,000 in value by this action.
 - c. ☐ recovering \$10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3. ☐ All court fees and court costs that were waived in this action have been paid to the court *(check one)*: ☐ Yes ☐ No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____



EXHIBIT B

For Immediate Release:

September 30, 2019

Contacts:

Craig Jones, Ventura Water PIO
805-654-7526
cajones@cityofventura.ca.gov

Ben Pitterle, Channelkeeper Science & Policy Director
805-563-3377 ext. 3
ben@sbck.org

**THE CITY OF VENTURA AND SANTA BARBARA CHANNELKEEPER PRESENT INTERIM
SETTLEMENT ON VENTURA RIVER LITIGATION**

Combined efforts result in an interim agreement that will protect and preserve the Ventura River Watershed, wildlife and the many diverse interests that rely on its water supply

Ventura, California – The City of San Buenaventura and Santa Barbara Channelkeeper are pleased to announce an interim settlement in the lawsuit regarding the pumping and diversion of water from the Ventura River Watershed. Both Channelkeeper and the City are dedicated to ensuring the protection of this finite water source and the habitat and species that rely on it while providing water now and for the future. This collaborative agreement brings us another step closer towards this goal.

As part of the interim settlement, the City agreed to begin a Pilot Program to reduce its pumping and diversion of water from the river when flows drop during dry times to help protect species that depend on the river. The City will also address two low-flow fish passage barriers at its Foster Park facilities and install two monitoring gauges to help better evaluate water levels in the river. These interim measures will provide temporary assurance that some water remains in the river until scientific studies are completed to establish appropriate permanent safeguards for steelhead while also meeting the community's water needs.

"We are proud to be working with Channelkeeper to put forth a plan that will protect the needs and rights of each water user in the watershed," said **Mayor Matt LaVere**. "This settlement represents a shared commitment to securing our water resources for all who rely on them now and moving forward."

"Channelkeeper is gratified that the City is engaged in good faith in a process to restore river flows for steelhead and other species throughout the length of the Ventura River," said Kira Redmond, Executive Director of Santa Barbara Channelkeeper. "While there is a long road ahead, we look forward to collaborating with the City to establish a permanent solution that ensures sufficient flows for steelhead and other aquatic life in the future."

Finding common ground with the City enabled Channelkeeper to help protect the steelhead for the upcoming dry season. Both sides had to compromise to create a vehicle to serve the needs of both the municipal customers of the City and the environment in the future.

This interim settlement represents a milestone in a collaborative process that has been underway since April in establishing a holistic, locally driven solution that protects the Ventura River and steelhead and helps preserve the City's oldest water supply for the future. By working together with the many diverse water users in the region, the State Water Resources Control Board, and the California Department of Fish and Wildlife, the objective of the City and Channelkeeper is to establish an adaptive and lasting

framework that clearly recognizes the needs and rights of each water user, ensures sufficient flows to sustain wildlife and public recreation, and shares the responsibility of preserving finite water supplies amongst all users.

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